

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 07/09/07	NUMBER 03.03.140
SUBJECT PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS		SUPERSEDES 03.03.140 (12/11/00)	
		AUTHORITY MCL 750.520c 791.203; 791.204; 42 USCA 15601 <u>et seq.</u> ACA STANDARDS 4-4281-1 through 4-4281-7	
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POLICY STATEMENT:

The Department enforces a zero tolerance standard for sexual violence between or among prisoners. The Department also enforces a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff overfamiliarity with prisoners.

RELATED POLICIES:

01.01.140	Internal Affairs
02.03.100	Employee Discipline
03.03.105	Prisoner Discipline
03.03.110	Special Problem Offender Notice
03.03.130	Humane Treatment and Living Conditions for Prisoners
04.05.120	Segregation Standards

POLICY:

DEFINITIONS

- A. Prisoner on Prisoner Sexual Violence - Abusive sexual contact and non-consensual sexual acts between or among prisoners without the other prisoner's consent or with a prisoner who is unable to consent or refuse. For purposes of this policy:
 1. "Abusive sexual contact" means physical contact with another prisoner for sexual purposes, including intentional touching of sexual areas but not including penetration.
 2. "Non-consensual sexual acts" means sexual contact with another prisoner involving penetration.
- B. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
- C. Staff Sexual Harassment - Verbal statements or comments of a sexual nature directed by staff to a prisoner, demeaning references to gender or derogatory comments about body or clothing directed by staff to a prisoner, or profane or obscene language or gestures of a sexual nature directed by staff to a prisoner.
- D. Staff Sexual Misconduct - A sexual act directed by an employee toward a prisoner, including any of the following:
 1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act.
 2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify the sexual desire of any person.

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3. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism.

GENERAL INFORMATION

- E. For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program and parolees residing in a Department facility.
- F. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph L; however, overfamiliarity, staff sexual misconduct, and staff sexual harassment involving these offenders also is prohibited and shall be reported and investigated as set forth in PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline".
- G. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. The prisoner also shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to segregation in accordance with PD 04.05.120 "Segregation Standards".

PRISON RAPE ELIMINATION ACT

- H. The Prison Rape Elimination Act of 2003 ("PREA") addresses prisoner on prisoner sexual violence, staff sexual misconduct, and staff sexual harassment in correctional facilities and specifically provides for the analysis of the incident and effects of such conduct. The Special Administrator for Correctional Facilities Administration (CFA) shall be responsible for reporting statistical information and other data as required under the Act. Staff shall supply information requested by the Special Administrator for this purpose as directed by the Special Administrator.
- I. The CFA Special Administrator shall be responsible for monitoring compliance with this policy at all facilities housing female offenders; this responsibility does not include monitoring prisoner on prisoner sexual violence except as required to meet PREA reporting requirements as set forth in Paragraph H and as otherwise directed by the CFA Deputy Director.

PROHIBITED CONDUCT

- J. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner voluntarily engaging in such behavior is subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards". A Special Problem Offender Notice shall be issued, as appropriate, as set forth in PD 03.03.110 "Special Problem Offender Notice".
- K. Staff sexual harassment, staff sexual misconduct, and staff overfamiliarity are violations of Department work rules; staff engaging in such conduct are subject to discipline pursuant to PD 02.03.100 "Employee Discipline". It also is a felony for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.
- L. It is a felony for a contractual employee or a volunteer to engage in sexual contact with a prisoner, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee through the appropriate chain of command of the matter; the FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual

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no longer provides services to probationers or parolees.

- M. Due to concerns unique to CFA and FOA facilities housing female prisoners, including privacy issues, staff assigned to such facilities are subject to additional requirements. Those requirements shall be set forth in operating procedures approved by the CFA Special Administrator and, in CFA, approval of the CFA Deputy Director.

REPORTING PROHIBITED CONDUCT

- N. Staff shall immediately report allegations of conduct prohibited by this policy to appropriate supervisory staff. Failure to do so is a work rule violation and may result in discipline pursuant to PD 02.03.100 "Employee Discipline".
- O. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct, to the inspector or any other Department employee. Such allegations may be reported verbally or in writing, including through the grievance process. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. Female prisoners also may report such allegations in confidence to the CFA Special Administrator.
- P. Prisoners in a CFA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be referred to Bureau of Health Care Services (BHCS) psychological services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services". Prisoners in an FOA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.
- Q. Prisoners who make accusations of misconduct against employees, including for staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, which are investigated and determined to be unfounded shall be charged with the major misconduct of "Interference with the Administration of Rules", with approval of the Director, CFA or FOA Deputy Director as appropriate, or designee. Hearings shall be conducted in accordance with PD 03.03.105 "Prisoner Discipline".
- R. Complaints filed by a prisoner regarding conduct prohibited by this policy shall serve to exhaust a prisoner's administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with PD 03.02.130 "Prisoner/Parolee Grievances".

INVESTIGATION OF ALLEGATIONS OF PROHIBITED CONDUCT

- S. Reasonable steps shall be taken to ensure the confidentiality of reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff and prisoners who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline" and PD 03.03.105 "Prisoner Discipline", as appropriate. However, this does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. It also does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service rules and regulations, or applicable collective bargaining unit agreements.
- T. For each investigation which sustains an allegation of prisoner on prisoner sexual violence, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/harassment, the investigator assigned to the case shall complete the United States Department of Justice Survey on Sexual Violence form (SSV-IA) and submit it to the CFA Special Administrator. The investigator shall include with the form a copy of the investigative report and related Critical Incident Report/FOA Critical Incident Notification form, major misconduct reports, and major misconduct hearing reports, as applicable.

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Prisoner on Prisoner Sexual Violence

- U. All reported allegations of prisoner on prisoner sexual violence or threats of such behavior, whether reported verbally or in writing, shall be referred for investigation to the Warden or designee or, in FOA, to the appropriate Regional Administrator. The assigned investigator shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts, unless otherwise directed by the investigating law enforcement agency. The investigation shall be coordinated as necessary with the hearing investigator if disciplinary charges are issued or the alleged victim is being reclassified to involuntary protective segregation.
- V. Allegations of prisoner on prisoner non-consensual sexual acts also shall be referred to MSP or other appropriate law enforcement agency for investigation. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency.

Staff Sexual Misconduct/Harassment and Staff Overfamiliarity

- W. The CFA Special Administrator may request that an investigation be conducted in response to allegations s/he receives alleging staff sexual misconduct/sexual harassment or staff overfamiliarity at facilities housing female prisoners. The Special Administrator shall share with the facility head and his/her supervisors, as appropriate, allegations of such conduct.
- X. All reported allegations of staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in PD 02.03.100 "Employee Discipline" except that if the allegation falls within the jurisdiction of the Internal Affairs Division, Operations Support Administration, it shall instead be referred to that Division as set forth in PD 01.01.140 "Internal Affairs". The Administrator of the Internal Affairs Division shall ensure that all allegations that, if true, would constitute a criminal act are referred to MSP or other appropriate law enforcement agency for investigation; however, the Department investigation shall proceed in accordance with PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline" regardless of whether the referral results in criminal prosecution.
- Y. In all investigations of staff sexual misconduct/sexual harassment or staff overfamiliarity, investigators shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts. The investigation shall not be closed simply due to the resignation, transfer, or termination of the accused staff person; the investigation shall proceed in accordance with PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline".
- Z. Staff who are accused of, witnessed, or have personal knowledge of staff sexual misconduct/sexual harassment, or staff overfamiliarity and refuse to cooperate with an investigation shall be subject to discipline, in accordance with PD 02.03.100 "Employee Discipline".
- AA. Wardens and, for FOA facilities, the FOA Deputy Director shall ensure that information on all allegations of staff sexual misconduct/sexual harassment and staff overfamiliarity is entered into the Allegations Investigations Personnel Action System (AIPAS). This shall include information on the outcome of the investigation. Although entered on AIPAS, information on allegations that do not result in sustained rule violations shall not be retained in an employee's Personnel File or used for any purpose not authorized by this or any other policy directive.
- BB. Except for staff specifically authorized by the Director, only the CFA Special Administrator and his/her staff and the Deputy Director of Operations Support Administration (OSA) and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, shall have access to information in AIPAS.

ADDITIONAL MEASURES TO MINIMIZE PROHIBITED CONDUCT

- CC. The Administrator of the Office of Training and Professional Development in the Bureau of Human

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Resources, OSA, shall ensure both new employee and in-service training is available to staff regarding conduct prohibited by this policy. The Administrator of the Office of Training and Professional Development also shall ensure that training is available on how to conduct investigations under this policy. Staff, including investigators and facility administrators, shall attend training as required.

- DD. The CFA Deputy Director shall ensure a brochure is maintained to educate prisoners regarding conduct prohibited by this policy, self-protection, how to report conduct or threats of conduct prohibited by this policy, and treatment and counseling available to them. The brochure shall be available to all prisoners in CFA and FOA facilities and shall be incorporated into facility orientation programs and the Prisoner Guidebook. Reasonable measures shall be taken to ensure that non-English speaking prisoners receive the same information.
- EE. Each Warden and, for FOA facilities, the FOA Deputy Director shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. In CFA, this includes maintaining a key receipt system which identifies employees assigned to receive keys to these areas, consistent with the requirements set forth in PD 04.04.100 "Custody, Security and Safety Systems"; this also includes conducting rounds of such areas as set forth in PD 04.04.100 at intervals sufficient to guard against conduct prohibited by this policy.

Identification/Counseling of Prisoners in CFA with Histories of Sexual Victimization or Sexually Aggressive Behavior

- FF. As part of the initial assessment conducted at reception facilities pursuant to PD 04.01.105 "Reception Facility Services", prisoners convicted of or identified as having a history of a predatory or assaultive sexual offense shall be referred to BHCS psychological services staff for assessment and counseling; this shall include assessing the need for specialized programming for predatory or assaultive sex offenders (e.g., assaultive offender program; sex offender program), unless the prisoner was previously interviewed and has not engaged in a new predatory or assaultive sexual offense since that interview. Prisoners identified as having a history of physical or sexual abuse, or who pose a reasonable concern that they may be sexually victimized while incarcerated due to age, physical stature, history, or physical or mental disabilities shall be similarly referred to BHCS psychological services staff; the Intake Screening for History of Sexual or Physical Abuse form (CHJ-464) shall be completed by BHCS staff as part of this screening process. When necessary, prisoners shall be referred for mental health services in accordance with PD 04.06.180 "Mental Health Services".
- GG. Whenever a prisoner transfers, s/he shall be screened within 24 hours of arrival at the receiving facility to identify any history of sexually aggressive behavior and to assess the prisoner's risk of sexual victimization at that facility due to his/her age, physical stature, history, or physical or mental disabilities. This shall be documented in writing and considered when making housing, bed, and work assignments at that facility.
- HH. Prisoners with a history of sexually aggressive behavior, or who are found guilty of sexually aggressive behavior while incarcerated, shall be referred to BHCS psychological services staff for assessment, counseling, and other necessary mental health services, as appropriate, consistent with the requirements set forth in PD 04.06.180 "Mental Health Services". Prisoners who are reasonably believed to be at risk of sexual victimization while incarcerated, or who have been sexually assaulted while incarcerated, shall similarly be referred.

OPERATING PROCEDURES

- II. The FOA Deputy Director, Wardens, and, for facilities housing female prisoners, the CFA Special Administrator shall ensure that procedures are developed to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

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AUDIT ELEMENTS

- JJ. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

Approved: PLC 06/13/07